

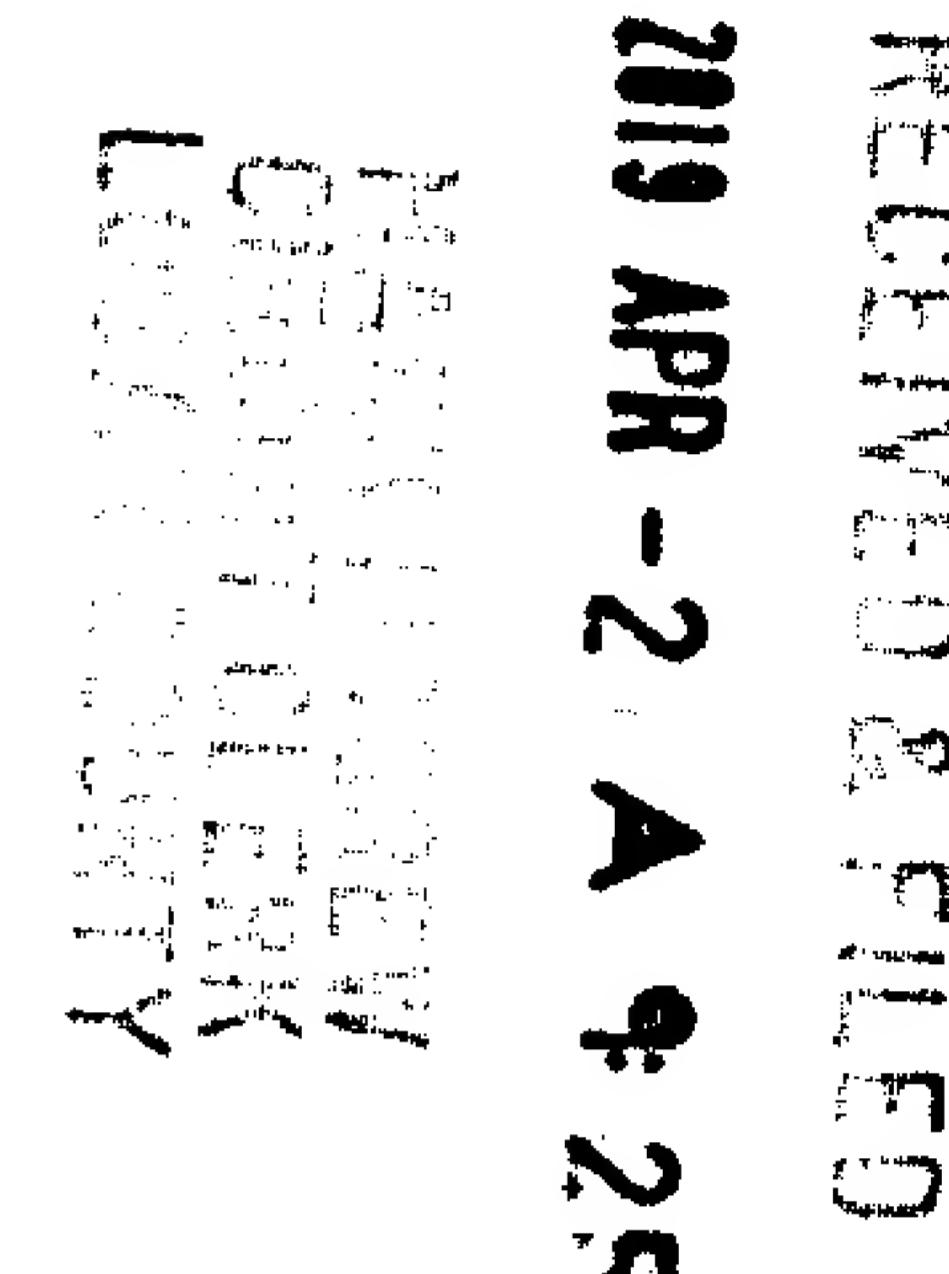


LEWIS BRISBOIS BISGAARD & SMITH LLP

Tim J. Yianne  
222 Capitol Street, Fifth Floor  
Charleston, West Virginia 25301  
Tim.Yianne@lewisbrisbois.com  
Direct: 304.553.0161

March 28, 2019

File No. 34569.32



**VIA U.S. MAIL**

Mark A. McGrew, Clerk  
Logan County Circuit Court  
Logan County Courthouse  
300 Stratton Street, Room 311  
Logan, WV 25601

Re: Persinger & Associates, Inc. v. Logan County Board of Education, et al.  
Civil Action No. 19-C-21

Dear Mr. McGrew:

Please find enclosed "Defendant Williamson Shriver Architects, Inc.'s Answer to Verified Complaint" together with two copies of a Civil Case Information Sheet for filing in the above-styled civil action.

If you have any questions about the enclosures, please contact me. Thank you for your assistance with this court filing.


Sincerely,

A handwritten signature in black ink, appearing to read 'TJY'.

Tim J. Yianne of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

TJY:jw  
Encl.

cc: Charles M. Johnstone, II, Esq.  
Kenneth E. Webb, Jr., Esq.



**IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA**

**PLAINTIFFS:** **PERSINGER & ASSOCIATES, INC., a West Virginia corporation,**

**CASE NUMBER:**  
**19-C-21**

**DEFENDANT:** **LOGAN COUNTY BOARD OF EDUCATION, and WILLIAMSON SHRIVER ARCHITECTS, INC., a West Virginia corporation.**

**HONORABLE ERIC H. O'BRIANT**

**II. TYPE OF CASE:**

- General Civil       Adoption  
 Mass Litigation       Administrative Agency Appeal  
(As defined in T.C. R. Rule XIX (c))  
 Asbestos       Civil Appeal from Magistrate Court  
 Carpal Tunnel Syndrome       Miscellaneous Civil Petition  
 Diet Drugs       Mental Hygiene  
 Environmental       Guardianship  
 Industrial Hearing Loss       Medical Malpractice  
 Silicone Implants  
 Other: \_\_\_\_\_
- Habeas Corpus/Other Extraordinary Writ  
 Other: \_\_\_\_\_


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#25

**III. JURY DEMAND:**     Yes     No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): Unknown

**IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?     YES     NO**  
IF YES, PLEASE SPECIFY:

- Wheelchair accessible hearing room and other facilities  
 Interpreter or other auxiliary aid for the hearing impaired  
 Reader or other auxiliary aid for the visually impaired  
 Spokesperson or other auxiliary aid for the speech impaired  
 Other: Unknown at this time



Attorney Name: Tim J. Yianne (WVSB 8623)

Representing:

Firm: Lewis Brisbois Bisgaard & Smith LLP

Plaintiff

222 Capitol Street, Fifth Floor

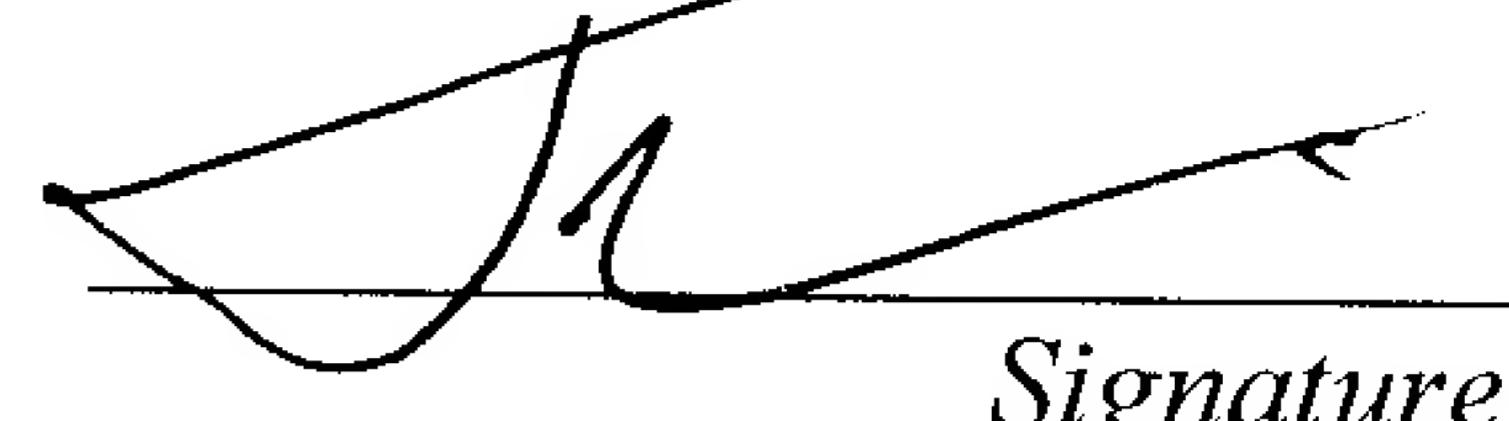
Defendant – **Williamson Shriver  
Architects, Inc.**

Address: Charleston, West Virginia 25301

Cross-Complainant  Cross-Defendant


Telephone: (304) 553-0166

Dated: March 28, 2019



Signature

Pro Se



**IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA**

**PLAINTIFFS:** **PERSINGER & ASSOCIATES, INC., a West Virginia corporation,**

**CASE NUMBER:**  
**19-C-21**

**DEFENDANT:** **LOGAN COUNTY BOARD OF EDUCATION, and WILLIAMSON SHRIVER ARCHITECTS, INC., a West Virginia corporation.**

**HONORABLE ERIC H. O'BRIANT**

**II. TYPE OF CASE:**


- General Civil
- Adoption
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  - Asbestos
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  - Carpal Tunnel Syndrome
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  - Mental Hygiene
  - Environmental
  - Guardianship
  - Industrial Hearing Loss
  - Medical Malpractice
  - Silicone Implants
  - Other: \_\_\_\_\_
- Habeas Corpus/Other Extraordinary Writ
- Other: \_\_\_\_\_

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- Spokesperson or other auxiliary aid for the speech impaired
- Other: Unknown at this time



Attorney Name: Tim J. Yianne (WWSB 8623)

Firm: Lewis Brisbois Bisgaard & Smith LLP

222 Capitol Street, Fifth Floor

Address: Charleston, West Virginia 25301

Telephone: (304) 553-0166

Representing:

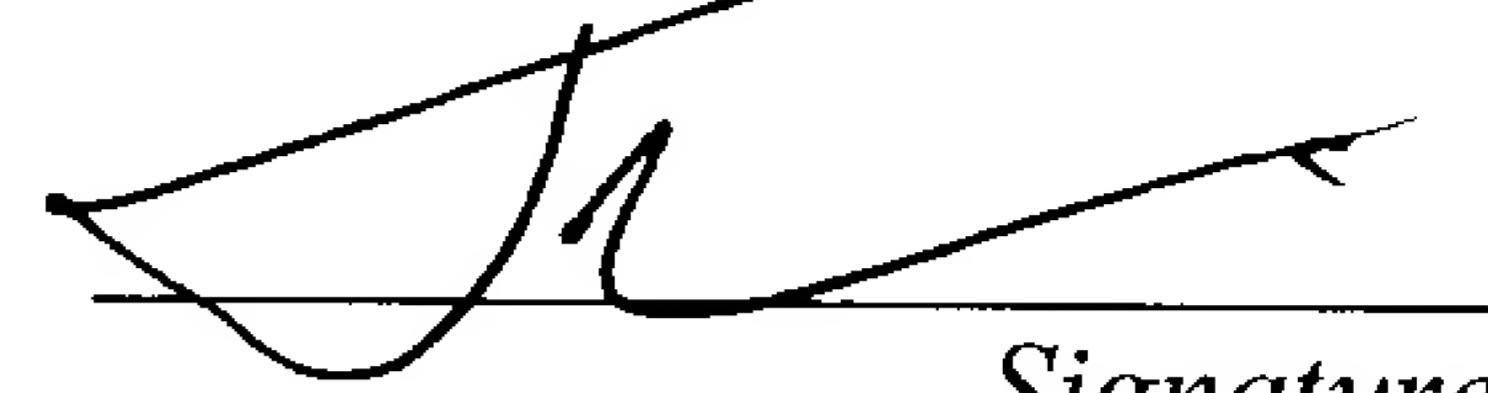
Plaintiff

Defendant – **Williamson Shriver  
Architects, Inc.**


Cross-Complainant  Cross-Defendant

Dated: March 28, 2019

Pro Se



Signature



IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

PERSINGER & ASSOCIATES, INC.,  
a West Virginia Corporation,

Plaintiff,

v.

CIVIL ACTION NO. 19-C-21  
HONORABLE ERIC H. O'BRIANT

LOGAN COUNTY BOARD OF EDUCATION, and  
WILLIAMSON SHRIVER ARCHITECTS, INC.,  
a West Virginia Corporation,

Defendants.

**DEFENDANT WILLIAMSON SHRIVER  
ARCHITECTS, INC.'S ANSWER TO VERIFIED COMPLAINT**


COMES NOW the Defendant Williamson Shriver Architects, Inc. (hereinafter "Defendant"), by and through counsel, Tim J. Yianne and Lewis Brisbois Bisgaard & Smith, LLP, and for its answer to Plaintiff's Verified Complaint (hereinafter "Complaint") states as follows:

**GENERAL RESPONSE AND PREAMBLE**

This responsive pleading has been prepared, served, and filed by counsel for the Defendant under the West Virginia Rules of Civil Procedure. As permitted by Rule 8, defenses to the claims made in the Complaint are being asserted alternatively and, in some cases, hypothetically. Defenses are being asserted regardless of apparent consistency and are based both on legal and equitable grounds. As the facts of this civil action are fully developed through the discovery process, certain defenses may be abandoned, modified, or amended as permitted by and consistent with the West Virginia Rules of Civil Procedure.

In order to preserve important legal rights and protection, the Defendant sets forth below certain affirmative defenses which, based upon the information set forth in the Complaint, it believes does or may apply to some or all of the claims raised therein. The Defendant reserves the right to

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


withdraw, modify or amend some or all of the affirmative defenses set forth below, in whole or in part, depending on the outcome of discovery in this civil action.

**ANSWER**


In answer to the separate paragraphs of Plaintiff's Complaint, Defendant states as follows:

1. Defendant is without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 1 of the Complaint, and therefore denies the same.
2. Defendant is without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 2 of the Complaint, and therefore denies the same.
3. Defendant admits the allegations contained in Paragraph 3 of the Complaint.
4. For its Answer to Paragraph 4 of the Complaint, Defendant states that Paragraph 4 sets forth, or attempts to set forth, legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations set forth, or attempted to be set forth, in Paragraph 4.
5. In response to Paragraph 5 of the Complaint, Defendant states that all bid and contract documents with respect to the construction of the "New Chapmanville Intermediate School" ("Project") shall speak for themselves, and denies any allegations inconsistent therewith.
6. Paragraph 6 of the Complaint asserts legal conclusions to which no response is required. To the extent a response is deemed required, Defendant states that all bid and contract documents with respect to the Project shall speak for themselves in terms of duties and obligations, and denies any allegations inconsistent therewith.
7. Paragraph 7 of the Complaint asserts legal conclusions to which no response is required. To the extent a response is deemed required , Defendant states that all contract documents with




respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.

8. Paragraph 8 of the Complaint asserts legal conclusions to which no response is required. Furthermore, Paragraph 8 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant is currently without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 8.
9. Paragraph 9 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant is currently without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 9 of the Complaint.
10. In response to the allegations in Paragraph 10 of the Complaint, Defendant states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.
11. In response to the allegations in Paragraph 11 of the Complaint, Defendant states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.
12. In response to the allegations in Paragraph 12 of the Complaint, Defendant states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.
13. Paragraph 13 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant is currently




without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 13 of the Complaint.

14. Paragraph 14 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant is currently without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 14 of the Complaint.
15. In response to the allegations in Paragraph 15 of the Complaint, Defendant states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.
16. Defendant denies the allegations in Paragraph 16 of the Complaint.
17. In response to the allegations in Paragraph 17 of the Complaint, Defendant states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.
18. Defendant denies the allegations in Paragraph 18 of the Complaint. Defendant further states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.
19. Paragraph 19 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant is currently without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 19 of the Complaint.
20. Defendant denies the allegations in Paragraph 20 of the Complaint. Defendant further states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.




21. In response to Paragraph 21 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Otherwise, Defendant denies the allegations in Paragraph 21.
22. In response to Paragraph 22 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Otherwise, Defendant denies the allegations in Paragraph 22.
23. In response to Paragraph 23 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Otherwise, Defendant denies the allegations in Paragraph 23. Defendant further states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.
24. In response to Paragraph 24 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Defendant further states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.
25. In response to Paragraph 25 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Defendant further states that all bid and contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith.
26. Defendant denies the allegations in Paragraph 26 of the Complaint.
27. In response to Paragraph 27 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Defendant further states that all recommendations and assessment of liquidated damages




against Plaintiff are justified. Defendant denies any wrongdoing alleged against it in Paragraph 27.

28. In response to Paragraph 28 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Defendant further states that all contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith. Defendant denies any wrongdoing alleged against it in Paragraph 28.
29. In response to Paragraph 29 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Defendant denies any wrongdoing alleged against it in Paragraph 29.
30. In response to Paragraph 30 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Defendant denies any wrongdoing alleged against it in Paragraph 30.
31. In response to Paragraph 31 of the Complaint, Defendant states that any delays and falling behind schedule on the Project were a result of the acts, omissions and breaches of Plaintiff. Defendant further states that all contract documents with respect to the Project shall speak for themselves, and denies any allegations inconsistent therewith. Defendant denies any wrongdoing alleged against it in Paragraph 31.
32. Paragraph 32 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant is currently without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 32 of the Complaint.



33. Defendant hereby incorporates its answers to Paragraphs 1-32 of the Complaint as if fully set forth herein.
34. Paragraph 34 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant denies the allegations in Paragraph 34 of the Complaint.
35. Paragraph 35 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant denies the allegations in Paragraph 35 of the Complaint, including all subparts.
36. Paragraph 36 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant denies the allegations in Paragraph 36 of the Complaint.
37. Paragraph 37 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant denies the allegations in Paragraph 37 of the Complaint, including all subparts.
38. Paragraph 38 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant denies the allegations in Paragraph 38 of the Complaint.
39. Paragraph 39 of the Complaint is not directed toward Defendant; therefore, no response from Defendant is required. To the extent a response is deemed required, Defendant denies the allegations in Paragraph 39 of the Complaint.
40. Defendant hereby incorporates its answers to Paragraphs 1-39 of the Complaint as if fully set forth herein.



41. Paragraph 41 of the Complaint asserts legal conclusions to which no response is required.

To the extent a response is required, Defendant states all contract documents with respect to the Project and any controlling West Virginia law speaks for themselves, and denies any allegations inconsistent therewith.

42. Defendant denies the allegations in Paragraph 42 of the Complaint, including all subparts.

43. Defendant denies the allegations in Paragraph 43 of the Complaint.

44. Defendant denies the allegations in Paragraph 44 of the Complaint.

45. Defendant denies that Plaintiff is to any relief sought in the *ad damnum* clause immediately following Paragraph 44 the Complaint to the extent that relief is sought from Defendant.

46. Defendant denies any and all allegations in the Complaint that are not specifically admitted herein.

### **AFFIRMATIVE DEFENSES**

#### **FIRST DEFENSE**

Plaintiff's fail to state a claim upon which relief may be granted.

#### **SECOND DEFENSE**

Plaintiff's claims may be barred by a lack of standing.

#### **THIRD DEFENSE**


Plaintiff's claims may be barred by the doctrines of waiver and/or estoppel.

#### **FOURTH DEFENSE**

Plaintiff's claims may be barred by the doctrine of consent.

#### **FIFTH DEFENSE**

Plaintiff's claims may be barred by the doctrine of satisfaction.



## **SIXTH DEFENSE**

Plaintiff's claims may be barred by the doctrine of release.

## **SEVENTH DEFENSE**

Plaintiff's claims may be barred by the doctrine of setoff.

## **EIGHTH DEFENSE**

Plaintiff's claims may be barred by the doctrines of *res judicata* and/or collateral estoppel.

## **NINTH DEFENSE**

Plaintiff's claims may be barred by the applicable statute of limitations.

## **TENTH DEFENSE**

Plaintiff's claims may be barred by the doctrine of laches.

## **ELEVENTH DEFENSE**

Plaintiff's claims may be barred by a failure of consideration.

## **TWELFTH DEFENSE**


Plaintiff's claims may be barred by the doctrines of payment, ratification and/or acquiescence.

## **THIRTEENTH DEFENSE**

Plaintiff's damages are the result of Plaintiff's own failure to manage and prosecute the work on the Project.

## **FOURTEENTH DEFENSE**

Plaintiff expressly assumed the risk of extra costs incurred to meet the Project deadlines.



## **FIFTEENTH DEFENSE**

Plaintiff's Complaint contains insufficient information to permit Defendant to raise all appropriate defenses, therefore Defendant reserve the right to amend its pleading as the facts of this civil action are fully developed through the discovery process.

### **JURY DEMAND**

Defendant respectfully requests a trial by jury on all issues so triable.

### **PRAYER**


WHEREFORE, Defendant, Williamson Shriver Architects, Inc., prays that the Plaintiff's Complaint be dismissed, with prejudice, and held for naught; that Plaintiff recovers nothing of Defendant; that Defendant recovers its costs, expenses of suit, and reasonable attorney's fees necessary in defending said Complaint; and for such other and further relief, whether legal or equitable in character, as to which Defendant may be entitled.

## **WILLIAMSON SHRIVER ARCHITECTS, INC.**

By Counsel:



\_\_\_\_\_  
Tim J. Yianne, Esquire (WVSB #8623)  
Lewis Brisbois Bisgaard & Smith LLP  
222 Capitol Street, Fifth Floor  
Charleston, WV 25301  
(304)553-0166/(304)932-0265 (F)  
tim.yianne@lewisbrisbois.com



**IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA**

**PERSINGER & ASSOCIATES, INC.,  
a West Virginia Corporation,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 19-C-21  
HONORABLE ERIC H. O'BRIANT**

**LOGAN COUNTY BOARD OF EDUCATION, and  
WILLIAMSON SHRIVER ARCHITECTS, INC.,  
a West Virginia Corporation,**

**Defendants.**

**CERTIFICATE OF SERVICE**

I, Tim J. Yianne, do hereby certify that I have served the foregoing "Defendant Williamson Shriver Architects, Inc.'s Answer to Plaintiff's Verified Complaint" on counsel of record by mailing true and correct copies of the same to them in the regular course of the United States Mail, postage prepaid, this 28<sup>th</sup> day of March, 2019, as follows:

Charles M. Johnstone, II, Esq.  
Johnstone & Gabhart, LLP  
P. O. Box 313  
Charleston, WV 25321  
*Counsel for Plaintiff*

Kenneth E. Webb, Jr., Esq.  
Bowles Rice, LLP  
P. O. Box 1386  
Charleston, WV 26505  
*Counsel for Logan County Board of Education*



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